

REMARKS/ARGUMENTS

Claims 1-13 remain in this application. Claim 1 has been amended slightly to emphasize the fundamental differences between the claimed invention and the concrete form disclosed in Moore, Jr. 6,526,713.

The claims of this application presently stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-57 of U.S. Patent 6,655,650 owned by applicant's assignee. As noted in the Office Action, however, a timely filed terminal disclaimer in compliance with 37 C.F.R. 1.321(c) may be used to overcome the rejection.

Accordingly, enclosed herewith is a terminal disclaimer signed by the assignee owner Western Forms, Inc. in full compliance with the relevant rules. Therefore, it is respectfully requested that the double patenting rejection be removed.

Claim 1 also stands rejected under 35 U.S.C §102(e) as being anticipated by Moore U.S. 6,526,713. The Office Action does not indicate that claims 2-13 are also rejected on this basis, and it is therefore assumed that they are deemed by the patent office to contain patentable subject matter. In any event, the rejection of claim 1 is respectfully traversed for the reasons which follow, particularly in its amended form.

Moore, Jr. U.S. 6,526,713 discloses several embodiments of a form that uses foam insulating material which remains in place after the concrete cures. The embodiment of Figs. 1-6 uses a pair of laterally spaced apart foam panels 20 that are maintained in a separated condition by transversely extending connectors 50 projecting from and located between the interior surfaces 34 of the two forms. Only the interior surface 34 of each form has any structure projecting therefrom, i.e., the transverse connectors 50 and the web members 40 to which the connectors 40 are coupled. Fig. 5 shows the manner in which a web member 40 is located on the interior surface 34 of the panel 20. The exterior surface 32 of each form is smooth and flat, totally devoid of any structure of any kind projecting rearwardly therefrom. The ends of adjacent panels interfit with one another in a "tongue and groove" relationship as explained in column 10, lines 36-44.

The embodiment of Figs. 7 and 8 discloses the concept of placing one of the panels 20 in a horizontal condition on top of the wet concrete C. No opposed panel is utilized in this embodiment. The horizontally disposed panel has no structure of any kind projecting outwardly or rearwardly from the exterior face 32 of the panel 20.

In the embodiment of Figs. 9 and 9a, an upright panel 20 is spaced apart from an upright sheet 80 of plywood or the like to define a space 38 within which the concrete C is poured. As in the first embodiment, structure in the form of the web 40 and connectors 50 project from the interior face of the panel 20, and also from the interior face of the plywood sheet 80, into the concrete-receiving area. Like the other embodiments, this third embodiment discloses no structure whatsoever projecting rearwardly from the form 20 away from the concrete-receiving space.

In Figure 12, which is mentioned in the Office Action, a pair of forming panels 20 are maintained in spaced apart relationship by flexible linking members 90 that project inwardly from the interior face 34 of the panels. As explained in column 18, lines 29-34, the flexible linking members 90 may take the form of "a zip-tie, plastic tie strap, tie wire, or other similar components." As explained later in column 18, lines 51-54, the flexible linking member 90 "is connected through the respective passages of two extenders 60 and tightened, thereby securely interconnecting the spaced-apart panels 20." Thus, flexible linking member 90 is strictly a means for holding the two panels 20 in spaced apart relationship to present a cavity 38 that receives the liquid concrete. Linking members 90 are disposed on the interior side of each panel 20, not the exterior thereof. Indeed, each panel 20 has no structure at all extending rearwardly from the exterior surface 32.

As noted above, Moore, Jr. 6,526,713 lacks the calling in claim 1 for "structure projecting in an opposite, rearward direction from said face plate." The exterior surfaces 32 of panels 20 in the cited reference are totally devoid of rearwardly projecting structure. It is the interior or forward facing surfaces 34 of such panels that have the web members 40, the connectors 50 and the flexible linking members 90.

Furthermore, Moore, Jr. U.S. 6,526,713 completely fails to disclose "a flexible barrier element mounted on said structure in spaced relationship to said front face and adapted for impeding

Appl. No. 10/678,378
Amdt. dated July 28, 2004
Reply to Office Action of 05/03/2004

migration of the constituents out of the core past the barrier element until the concrete mix has cured." Although the Office Action refers to the flexible linking members 90 as "a flexible barrier element", they clearly are not. They do not perform that function in the cited reference, and there is no teaching or suggestion that they ever could. They certainly are not "adapted for impeding migration of the constituents" as called for by claim 1. They become embedded within the center of the concrete, not positioned on the outside to confine it.

Thus, it is apparent that Moore, Jr. 6,526,713 fails to disclose a number of positively recited elements of claim 1. Therefore, it cannot anticipate the subject matter of claim 1. Accordingly, it is respectfully requested that the rejection of claim 1 under 35 U.S.C. §102(e) as being anticipated by Moore, Jr. 6,526,713 be reconsidered and withdrawn. The cited reference simply does not show or suggest the claimed invention.

Claims 2-13 depend directly and indirectly from allowable claim 1 and set forth further details of construction not shown or suggested by the art of record. Accordingly, it is respectfully submitted that claims 2-13 are also in full condition for allowance.

Forwarding of formal Notice of Allowance of this application is respectfully requested. Any additional fee which might be due in connection with this application should be applied against our Deposit Account No. 19-0522.

Respectfully submitted,

HOVEY WILLIAMS LLP

By 

Stephen D. Timmons, Reg. No. 26,513
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
816/474-9050

ATTORNEYS FOR APPLICANT(S)

(Docket No. 30859-CNT1)